GOVERNMENT OF MYSORE

FOOD, CIVIL SUPPLIES AND LABOUR SECRETARIAT

Labour Dispute.—Industrial Dispute between the Workmen and the Management of Pandavapura Sahakara Sakkare Karkhane Limited, Pandavapura.

Award of the Labour Court, Mandya—Published.

Read the following Papers :

(1) Letter No. M.TO. No. 4605/72 dated 29th November 1972 from R. B. Hanmanthgad, Presiding Officer, Labour Court, Mandya.

IN THE COURT OF THE DISTRICT JUDGE AND *EX-OFFICO* PRESIDING OFFICER, LABOUR COURT, MANDYA.

PRESENT

Sri R. B. HANMANTGAD, LL.B.,

Presiding Officer.

Dated this 20th day of November, 1972.

MIS (IDA) No. 12 OF 1971.

First Party—

Workmen of Pandavapura Sahakara Sakkare Karkhane, Ltd., Pandavapura, by the Secretary, Pandavapura Sahakara Sakkare Karkhane Employees' Association, M. C. Road, Mandya.

(By Sri M. C. Narasimhiah,—*Advocate*).

Vs.

Second Party—

The Management of Pandavapura Sahakara Sakkare Karkhane, Ltd., Pandavapura.

(By Sri K. R. Ramaswamy Iyengar, *Advocate*)

Reference—

Government Order No. FCL. 627 LLD 70, dated 7th April 1971.

AWARD

1. The Government of Mysore by their order of reference No. FCL 627 LLD 70, dated 7th April 1971 have referred an industrial dispute existing between the above parties to this court for adjudication on the points of dispute *viz.*, Is Sriyut M. K. Venkategowda, Cane Superintendent of the Pandavapura Sahakara Sakkare Karkhane, Ltd., Pandavapura 'workman' as defined under Section 2(S) of the Industrial Disputes Act, 1947, if so, are the workmen of Pandavapura Sahakara Sakkare Karkhane, Ltd., justified in demanding that the scale of pay of Sriyut M. K. Venkategowda, Cane Superintendent, be revised as follows with effect from 21st December 1966—Rs. 600—40—1,000 *Plus* F.T.A. of 75/- rupees per month, and if not, to what relief is the said Sriyut Venkategowda entitled? On receipt of the above reference it was registered in the above case and notices were issued to the parties to appear and file their statements.

2. The first party filed the statement on 10th May 1971 stating that the claim made out for Sriyut M. K. Venkategowda is for fixation of a scale of pay for the post of Cane Superintendent held at the time of demand by Sri Venkategowda. The management did not concede the demand though the management did not seriously dispute the fairness and justness of the demand. Before the Conciliation Officer and Deputy Labour Commissioner, Bangalore, the management took out a stand that Sri Venkategowda

was not a 'workman' as he was drawing more than 500/- rupees per month as salary and also as he was holding the supervisory post. This was a misunderstanding of the true position. Hence, the matter is referred to the Court for decision. The Pandavapura Sahakara Sakkare Karkhane is engaged in the manufacture of sugar. It was started in 1959. The share capital has increased now. The crushing capacity has also increased. There are about 500 workmen employed in the Karkhane. The Wage Board for sugar industry appointed by the Government of India in 1960 made recommendations regarding wages, scales and other cognite matters affecting the employees in the factory. The recommendations of the Wage Board were accepted by the Government of India and the wage scales have been implemented in the sugar factory. However, II Party did not implement the recommendations. The disputes were raised by the Association with the second party. Some items were settled and some were not settled. Some disputes regarding implementation of the Wage Board Reports are still pending before the Industrial Tribunal at Bangalore. The Association took up a dispute in the matter of proper scale to be given to the post of Assistant Cane Superintendent. It arose with reference to the case of the employee Sri M. K. Venkategowda. The case tried by the Industrial Tribunal at Bangalore. The Association wanted the scale of 300 to 600 rupees for the post of Assistant Cane Superintendent. During the pendency of the dispute Sri M. K. Venkategowda was promoted as Cane Superintendent. So, the dispute regarding the fixation of scale of pay could not be persued and the matter ended in a compromise whereby the II Party agreed to pay a lumpsum of 3,250 rupees to Sri Venkategowda without prejudice to the claim for fixation of proper scale of pay to the Post of Cane Superintendent. The post of Cane Superintendent was used to be filled up by deputation of Government servants. But, the II Party took a decision to formally fill up the post of Cane Superintendent by promoting Sri Venkategowda. This formal promotion was given by the order dated 23rd April 1968 by the Managing Director. This order is with retrospective

effect from 21st December 1966 though Sri Venkategowda was discharging the duties of Cane Superintendent for some Part. Though he was promoted to the post of Cane Superintendent he was not given a higher scale. The Wage Board has not made specific recommendation regarding the scale of pay of Cane Superintendent. It was obviously a matter left out for being discussed between the parties. Without going into further details, Sri Venkategowda made some representations for higher scale of pay at 600–40–1,000. This was made with a view to bargain. The Association wanted to suggest a reasonable amendment of the same so as to keep good relation between the parties and in order to settle the dispute. However, the II Party took a technical stand. The scale of pay fixed for the Assistant Cane Superintendent is 200—15—350. However, the Association asked for the scale of Rs. 300—600. The scale of pay of Cane Superintendent has to be naturally higher than the scale of the Assistant Cane Superintendent. The II Party wants to fix it at the same scale of 200—15—300 which is paid to Assistant Cane Superintendent. However, the management is not justified in saying so. There is only one post of Cane Superintendent and it is held by Sri M. K. Venkategowda. On considering the nature of work etc., he is entitled to a better scale. Sri Venkategowda joined the service in 1960. He is qualified as B.Sc. (Agr). As there was no incumbent for the post of Cane Superintendent, Sri Venkategowda was put incharge of the same in 1961 and he worked in that post for 19 months. Thereafter also he was obliged to do the duties of the Cane Superintendent since the new incumbent was a new person. Such new person *viz*., D. P. Lakshminarasimhiah was relieved of the post from 31st March 1965 and Sri Venkategowda was placed incharge of that post for about a month. Then one Sri G. S. Thontadarya was appointed and he was transferred from 21st December 1966 and then Sri Venkategowda was again put incharge of Cane Superintendent. Later on the order of his posting was regularised by his promotion as Cane Superintendent from 21st December 1966. Though there is a formal promotion, there is no change in the scale

of his pay. The refusal of the II Party to fix his pay is wrong. The claim of Sri Venkategowda for higher scale is justified. His predecessors-in-office ere paid higher scale. On considering the duties etc., to be performed by the Cane Superintendent he is entitled to higher scale. In other factories the scale of pay starts from 600 rupees. Now Cane Development Officer in the very factory is paid 900 rupees salary with effect from 7th January 1970. In these circumstances, the court be pleased to pass an award by fixing the higher scale of pay from 21st December 1966 or from such date as is deemed fit.

3. The II Party filed the statement contending *inter alia* that the order of reference throws burden on the I Party to prove that Sriyut Venkategowda is a 'workman'. In the statement filed by the I Party it is not put-forth that Sri Venkategowda can make out a claim as a 'workman'. The scale of pay demanded by Venkategowda is 600-40-1,000 *Plus* F.T.A. 75 rupees per month. The Cane Superintendent is employed mainly in administrative capacity and therefore he will not be a 'workman' as defined in Section 2 (S) of the Industrial Disputes Act. Even then the post of Cane Superintendent is supervisory. The starting pay demanded is beyond Rs. 500 per month. On this ground also Venkategowda cannot be a 'workman'. The demand was made on 24th January 1970 and on this date the salary drawn by Sri Venkategowda is beyond 500 rupees per month. On 1st November 1969 Venkategowda was getting a total emoluments of Rs. 514–80 per month. Therefore no industrial dispute can be raised on behalf of Sri Venkategowda as he is not a 'workman'. Therefore, the Labour Court has no jurisdiction to adjudicate upon the reference. Even if Sri Venkategowda is entitled to any reliefs, he is entitled to the same from the date of award that can come into force and not earlier. It cannot be made effective from 21st December 1966 since the demand itself is made on 21st April 1970. The wage structure of the entire sugar factory is evolved by the Central Wage Board for the Sugar Industry. The recommendations of the Board were that

the revised scale should come into force from 1st November 1960 and should continue to be in force for a period of 5 years. The recommendations of the Board were implemented by the II Party and Sri Venkategowda received all consequential benefits. Second Wage Board was appointed in 1965 to consider the question of further revision of the wage structure in the sugar industry. Such report of the Second Wage Board is accepted by the Government of India and such recommendations are to be given effect from 1st November 1969 and the same are to remain in force for a period of 5 years. The II Party has agreed in principle to implement those recommendations and has set up a committee to work out the details. In the mean-while, the II Party has paid advances to its employees which are to be adjusted towards any amount that may become due to them consequent upon the implementation of those recommendations. Sri Venkategowda has received a sum of Rs. 200 as advance on this account. The pay scale of supervisory 'B' Grade pertaining southern region is 305—20—405—25—630 with corresponding dearness allowance. Even according to the recommendation of the Wage Board, Sri Venkategowda will be entitled to Supervisory 'B' Grade in the scale of 305-20-405-25-630. The claim of the I Party is absolutely speculative and unsustainable because even the Second Wage Board recommendations do not provide for such scale for Cane Superintendent. So, the claim of the I Party for the scale of 600-40-1,000 is to be rejected. It is true that II Party had appointed Cane Superintendents on deputation basis from the Government. However Sri Venkategowda was taken straight from College without any experience in sugar industry. It is true that Venkategowda is promoted as Cane Superintendent but his appointment as Cane Superintendent was regularised only. It is true that a dispute had been raised before the Industrial Tribunal, Bangalore, and Venkategowda was given some monetary relief. This does not mean that he entitled to any higher scale of pay. The I Party is aware of the legal difficulty in demanding the pay scale of 600-40-1,000. However a strange plea is

put forward in order to have bargaining. Whatever may be the motive behind the same, the demand for 600–40–1,000 has rendered the question beyond the jurisdiction of this Court. The reference to the scale of pay in other factories is not relevant. The other averments made in para 11 of the statement of I Party are also not relevant. The demand of the I Party and the order of reference are also premature. Sri Venkategowda is under suspension from 6th August 1970 on account of some allegations made out against him and an enquiry is still pending. In the circumstances explained in the statement, the I Party is not entitled to the reliefs sought for and hence reference may be answered in favour of the II Party.

4. The following issues are framed for decision :—

(1) Whether Sri M. K. Venkategowda-Cane Superintendent-is a 'workman' as defined in Section 2(s) of the Industrial Disputes Act ?

(2) If so, whether his scale of pay is to be revised from 21st December 1966 in the Grade of Rs. 600–40–1,000 with fixed travelling allowance of Rs. 75 per month, as claimed by the first party ?

(3) Whether the Labour Court has no jurisdiction to adjudicate these points, as contended by the second party ?

(4) Whether the revised scales, if to be given effect, to be from 21st December 1966, as claimed by party No. 1 ?

(5) Whether the demand made by the first party is premature and liable to be rejected as contended by the second party ?

(6) What order ?

FINDINGS

(1) No. (2) Will not survive. (3) Yes, the Labour Court has no jurisdiction. (4) Will not survive. (5)

Finding not necessary. (6) Reservance answered in negative.

REASONS

5. This is an industrial dispute referred by the Government to decide whether Sriyut M. K. Venkategowda, Cane Superintendent of the Pandavapura Sahakara Sakkare Karakhane is 'workman' as per definition of Section 2(s) of the Industrial Disputes Act and whether he is justified in demanding his pay scale in the revised grade of Rs. 600-40-1000 *plus* F.T.A. of 75 rupees with effect from 21st December 1966. The management of the sugar factory has contended that Sriyut M. K. Venkategowda is not a 'workman' within the meaning of section 2(s) of the Industrial Disputes Act and that the Labour Court has no jurisdiction to adjudicate such a point and fix the pay scale of Sriyut M. K. Venkategowda at 600-40-1000 with effect from 21st December 1966 and that the demand 'workman' is also premature.

6. The definition of 'workman' is given in Section 2(s) of the Industrial Disputes Act, 1947. The same is as follows:—

> workman" means any person (including an apprentice) employed in any industry to do any skilled or unskilled manual, supervisory, technical or clerical work for hire or reward, whether the terms of employment be expressed or implied, and for the purposes of any proceeding under this Act in relation to an industrial dispute, includes any such person who has been dismissed, discharged or retrenched in connection with, or as a consequence of, that dispute, or whose dismissal, discharge or retrenchment has led to that dispute, but does not include any such person—
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> (i) who is subject to the Army Act, 1950 (46 of of 1950), or the Air Force Act, 1950 (45 of

1950), or the Navy (Discipline) Act, 1934 (34 of 1934) ; or

(ii) who is employed in the police service or as an officer or other employee of a prison ; or

(iii) who is employed mainly in a managerial or administrative capacity ; or

(iv) who, being employed in a supervisory capacity, draws wages exceeding five hundred rupes per mensem or exercises, either by the nature of the duties attached to the office or by reason of the powers vested in him, functions mainly of a managerial nature.

As per such definition a person who is employed mainly in a managerial or administrative capacity, or who, being employed in a supervisory capacity draws wages exceeding 500 rupees per mensem or exercises either by the nature of the duties attached to the office or by a reason of the powers vested in him, functions mainly of a managerial nature. The version of the second party is that on the date of reference the Cane Superintendent Sri M. K. Venkategowda was drawing wages or drawing his emoluments exceeding 500 rupees per mensem and that the nature of his duty attached to the office is supervisory and as such Sri Venkategowda is not a 'workman' within the meaning of Section 2(s) of the Act. I will now consider the evidence adduced by the parties to know whether the duties of Cane Superintendent are supervisory in nature and whether his wages exceed 500 rupees per month on the date of reference or on the date when he demanded the revised pay scale. The witness N. L. Nagappa (P.W. No. 1) is the Secretary of the Pandavapura Sahakara Sakkare Karakhane Employees Association. He deposed that the Cane Superintendent, the Assistant Cane Superintendent and some others covered by the Wage Board are the members of the Association and that Sri Venkategowda is also a member of the Association. According to him, Venkategowda is a 'workman' within the meaning of Section 2(s) of the Industrial Disputes Act and that in the

present reference the demand is made for higher scale of pay than the one he is getting at present. The witness also stated that as an Assistant Cane Superintendent Venkategowda demanded his pay in the grade of 300-25-600 rupees and that the dispute had been referred to Industrial Tribunal, Bangalore and the dispute was settled and the post of Venkategowda was regularised to the post as Cane Superintendent and the management has assured to give him salary of Cane Superintendent and without prejudice to the other rights. Venkategowda was paid Rs. 3250 and the award copy passed is at Ex. P-12. According to him, the management did not fix the pay scale of Venkategowda as had been promissed and the request had been made as per Ex. P-16 and the matter was taken before the Conciliation Officer and the statements filed before the Conciliation Officer are Exts. P-14 and P-15 and the management putforth before the Conciliation Officer that pay of Sri Venkategowda is more than 500 rupees and so he is not a 'workman' and the matter could not be settled and therefore it was referred to the Government and the Government has referred the same to the Court for decision. According to him, as per the recommendations of the Sugar Wage Board, the gradation of the Assistant Cane Superintendent and the Cane Development Officer are the same and that the post of the Cane Superintendent is higher than the above two posts. He also stated that the pay demanded for Venkategowda is 600-40-1000 and the management of the sugar factory putforth that the post of the Cane Development Officer is higher than that of the Cane Superintendent, but it is not correct and that there is controversy in the gradation of the Cane Superintendent and that of the Cane Development Officer and so a scale of 600-40-1000 was demanded for the Cane Superintendent. He further stated that he had requested the management to start the pay of Venkategowda even less than 500 rupees and raise it to 1000 rupees. In his cross-examination he stated that it is his opinion that Sri Venkategowda, Cane Superintendent, is a 'workman' and that the assurance that had been given by the management

to revise the pay scale of Venkategowda was oral and it was not incorporated in the settlement under Ex. P-12. He also stated that as per Ex. P-16 Venkategowda agreed to continue the same scale of pay without prejudice to financial benefit, if any, as Cane Superintendent. He also stated that as per report of the First Wage Board, the post of the Assistant Cane Superintendent and that of Cane Development Officer are equal and such Wage Board did not recommend the pay scale of Cane Superintendent and that of Cane Manager and that as per the Second Wage Board report, the post of Cane Superintendent is described as supervisory 'B' and that of Cane Development Officer as supervisory 'A—II and the pay scale of Cane Superintendent is given as 305-20-405-25-630 and that of Cane Development Officer is 355-25-530-30-650-35-755. He also stated that in the statement filed for first party it is not claimed that Venkategowda is willing to accept the scale below 500 rupees. One Sri H. M. Devegowda (P. W. No. 2) deposed that he is working as Cane Supervisor at Pandavapura Sahakara Sakkere Karakhane and he knows Venkategowda who is now working as Cane Superintendent. According to him, the Cane Superintendent visits villages where the Cane Supervisors work and the Cane Superintendent directly deals with the cultivators and that the Cane Supervisor is not instructed in his work by the Cane Superintendent and that the Cane Superintendent is not doing the supervisory work and he deals with cultivators on technical problems like pest and use of fertilisers etc. In his cross-examination he stated that if the cane is not supplied to the factory by the cane growers, the Supervisor reports it to the Cane Superintendent and that Cane Superintendent never checks the reports of the supervisor. He also stated that if the cane growers complain against Cane Supervisors, the Cane Superintendent enquires over it and he visits the lands if there is any complaint about the misuse of the fertilisers. Another witness Kariputtegowda (P. W. No. 3) who is working as Cane Yard Supervisor in the Pandavapura Sahakara Sakkare Karakhane deposed—that Venkategowda is working as Cane Yard Superinten-

dent and he does not supervise over his work and there is a committee called as "Cane Development Committee" and the Supervisors attend the meetings and the Chairman of that committee gives instructions to the supervisors. He denied a suggestion that the post of Cane Superintendent is above the Cane Yard Supervisor. The Cane Yard Superintendent M. K. Venkategowda himself is examined as P. W. No. 4. He deposed that he joined the service with Pandavapura Sugar factory in 1960 as Assistant Cane Superintendent and before that he was working as Agricultural Demonstrator, Gulbarga. According to him, in 1960 the Cane Superintendent at Pandavapura sugar factory was one Gopalakrishna and he was a lent hand from the Government and when his services were withdrawn by the Government he took charge from him and thereafter one Lakshminarasimhiah was appointed as Cane Superintendent and he was paid Rs. 600 *plus* F.T.A. He also stated that the Wage Board recommendations were brought into force from 1960 and his salary was revised and fixed in the scale of 200-15-350 rupees and he raised a dispute and it was referred to the Industrial Tribunal and that during the pendency of that case he was promoted as Cane Superintendent from 21st December 1966 and that dispute was amicably settled as per Ex. P-12. According to him, one Thontadarya worked as Cane Superintendent in 1965-66 at 600 rupees *plus* other allowance per month and that while he himself worked as Assistant Cane Superintendent he was incharge of two sections at Mandya and he assisted Sri Lakshminarasimhiah. He also stated that on 6th January 1970 one Chandrasekhar was appointed as Cane Development Officer, and he is paid 900 rupees *plus* F.T.A. of 75 rupees and that his post and that of Assistant Cane Superintendent are equal as per Wage Board recommendations and the post of Cane Superintendent is higher than the said post. He also stated that after he became Cane Superintendent the area of his work has increased and the crushing capacity of the factory has also increased. He also stated that that while he worked as Assistant Cane Superintendent fixed T.A. given to him was 30 rupees per

month and now it is 75 rupees per month as Cane Superintendent but scale of pay and D.A. is not increased. According to him, the burden of work is also increased as Cane Superintendent and that his salary has reached the maximum of Rs. 350 per month in 1970. According to him, in Mandya Sugar factory the Cane Superintendent is paid 400-900 and in Hospet factory he is paid 600-40-1000. According to him, his daily routine work as Cane Superintendent is to attend the laboratory and see whether the juice is pure or not and then he goes to cane yard to see whether the cane is received or not as per contracts and then he will see whether the cane is received as per allotment and then he will go to villages etc., and he gives technical advice to the cane growers and he will have to see whether good quality of cane is supplied or not. According to him, he also attends the meeting of the Cane Development Committee and takes down the proceedings of the committee and the Chairman gives the detailed instructions. According to him, he does not supervise the works of Cane Supervisors or cane yard supervisors and the Development Committee gives instructions to them. According to him, he has demanded a particular scale and that he is prepared to accept the scale starting below 500 rupees. In his cross-examination he stated that Gopalakrishna and Thontadarya were lent hands and that Lakshminarasimhiah is a retired person. He further stated that in each cane section there is Supervisor, Field Assistant and Clerks and that if cane growers bring more cane than allowed under the permits, they approach him and request to allow excess sugarcane at weigh bridge and cane yard and that such persons also complain against Supervisors. In the month of August 1970 this Venkategowda Cane Superintendent was under suspension. However, he is paid his regular salary. The voucher for having paid his salary for August 1970 is produced at Ex. P-28. Sri Venkategowda admitted it and stated that he did not protest to accept salary for not giving him F.T.A. In para 8 of his deposition he stated that as per the first Wage Board report the post of Assistant Cane Superintendent is shown

as supervisory and that as per Ex. P-12 he agreed to continue on the same scale without prejudice to his rights as Cane Superintendent. From the date of regularisation of his Post of Cane Superintendent in the month of November 1970 he is paid salary as per the voucher produced at Ex. D-2. The salary paid to him is 514-80 p.m. Venkategowda admitted to have received such salary on 1st December 1970. On 10th March 1971 he received an advance of Rs. 200 against the amount that may become due on account of the implementation of the second Wage Board report. Venkategowda admitted it. According to him, he made his first representation to the management for increased scale of pay as per Ex. P-18 which is dated 4th December 1968. He also admitted that the management passed a resolution on 23rd April 1968 to confirm him in the post of Cane Superintendent and it is as per Ex. P-22. He admitted that fixed T.A. is paid only when Cane Superintendent is on duty. He denied a suggestion that Cane Development Committee is to decide only policy matters. According to him, no others work under him. He also denied a suggestion that subject to the supervision of the Managing Director and the General Manager Cane Superintendent is the head of the Section of Cane Harvesting, planting and supply. He also denied a suggestion that Cane Superintendent is the authority who finally accepts the agreements with growers. According to him, Field Assistant is to supervise planting of cane and report to the Supervisor. He denied a suggestion that Cane Superintendent is the authority to check the Register maintained by the Supervisors. A Register was shown to him produced at Ex. D-8. He admitted that at page 125 of this register he has passed remarks for having checked the register. According to him, he did so as per the instructions of the Chairman, but it is not so stated therein. He also admitted checking of the register found at pages 135 and 138 and having passed his remarks there. According to him, the Cane Supervisor issues permits to the cane growers to get fertilisers from the Co-operative Society. According to him, some times such fertilisers is misused and the Field Assist-

ants are expected to check the same, but the same is not reported to the Cane Superintendent. He also stated that report of the harvesting of the cane is given to the Cane Superintendent but he does not pass any remarks. However, a memo book at Ex. D-9 was shown to him and he admitted that at page 17901 he passed some remarks and called the explanation of the supervisor. Such remarks passed by him is dated 29th September 1969, and it is marked as Ex. D-9 (a). He also admitted that as per Ex. D-9 (b) at page 17911 he has directed the Supervisor to cancel the contract as the date of planting is doubtful. There are lorries belonging to the sugar factory and they are allotted to bring sugarcane to the factory. He admitted that as per Ex. D-9(c) and D-9(d) at pages 11916 and 19938 he made some alternative arrangements as the lorries ere found broken. He also stated that Supervisors send their diaries to the Cane Superintendent and the Cane Superintendent checks the same and if anything found wrong, the Supervisors are warned by him. Such remarks passed by Venkategowda are found at Ex. D-9 (e) at page 17918. Venkategowda further deposed that if Weigh Bridge Clerks commit mistakes, Cane Superintendent warns them. He admitted to have done so as per Ex. D-9 (f) at page 17924. He also admitted that as per Ex. D-9(g) at page 17926 he directed the Supervisor to allot a particular lorry instead of another lorry and give the load. According to him, as per Ex. D-10(a) in Ex.D-10 at page 18 he asked the explanation from Cane Yard Supervisor that supply of sugarcane is not satisfactory. He also stated that as per Ex. D-10 (b) at page 17 in Ex. D-10 he directed Field Assistant to stop taking contracts. According to him, as per Ex. D-10 (c) at page 18 he allotted lory to the Section. In para 11 of his deposition he stated that as Cane Superintendent he is the authority to sanction casual leave to Cane Supervisors. In his re-examination he stated that as per Ex. D-8 he made entries there as per the proceedings of the Cane Development Committee and as per Ex. D-9 and D-10 he issued memo on the instructions of the Chairman but he also stated that he has not stated so therein. One more witness

G. Thimmiah (P. W. No. 5) deposed that he is Cane Superintendent at Mysore Sugar Factory, Mandya and he produced document called for which is marked as Ex. P-44. According to him, his scale of pay is 400-30-640-40-800-50–950. In his cross-examination he stated that the work of Cane Superintendent is planting of sugarcane as per the programme fixed by the Manager and he has to give technical advices to the sugarcane growers and he has also to arrange for the supply of cane to the factory and to do general supervision over cultivation of sugarcane. He also produced a yearly report of Mandya sugar factory marked as Ex. P-46. According to him, the Assistant Cane Superintendent works under the Cane Superintendent. In his cross-examination he deposed that Supervisors and Field Assistants work under the Cane Superintendent. He also gave the duties of the Field Assistants. According to him, with the assistance of the Assistant Cane Superintendent he supervises the works of the Supervisors and that on his recommendation fertilisers is supplied to the cane growers that if fertiliser is misused by cane growers it is to be reported to the Cane Superintendent through the Supervisors and that if his subordinates want to report to the general Manager it is to be done through him and not directly. He also stated that he visits Plots to see the condition of the crops and he gives technical advise and that if anything is not complied with the questions the supervisors and the concerned Field Assistants and that he checks the registers and other documents maintained by Supervisors and that he has to hold enquiries against Supervisors etc., if there are complaints. At the end of para 6 in his deposition he specifically stated that most of his work is supervisory in nature. He also stated that he is a lent hand by the Government and his salary is given in his own scale in his Department and the same is not fixed by the company and that such scale is that of Class I Officer in the Government service. According to him, the scale of pay as stated in Ex. P-45 (a) is fixed by the Company. This is all the oral evidence led by the I Party.

7. The II Party examined the Cane Development Officer of Pandavapura Sugar Factory. He is one B. S. Chandrasekhar. According to him, he is working as Cane Development Officer in the last 2 years and in the beginning of his service one Venkategowda was Cane Superintendent and now he is not working there and that he himself is looking after the work of Cane Superintendent. According to him, as Cane Superintendent he is looking after the cane planting, cane harvest and supply of cane to the factory. He also stated that he looks after the general administration of cane section and the weigh bridge section. The witness stated that it is part of the duty of the Cane Superintendent to look-after general administration of the cane section and the weigh bridge section. The witness stated that there are 11 Supervisors and 30 Field Assistants and they work under the Cane Superintendent. He also gave the details of the duties done by Cane Supervisors and the Field Assistants. At the end of para 1 in his deposition he stated that the Cane Superintendent supervises the work of Supervisors and the Field Assistants and also the works at the weighbridge. He stated that the Cane Development Committee lays down the policy matters to the cane section and fixes the extent of cane plantation etc., and that the same are carried through resolutions and then the Cane Superintendent and Supervisors are responsible to carry out the directions of the committee and that it is the Cane Superintendent that gives instructions if there is any variation in the supply of cane needed. He specifically stated that it is the Cane Superintendent that gives instructions to the Supervisors. In his cross-examination he stated that Pandavapura sugar factory appointed him to the post and he had not applied for it. According to him, he has no personal knowledge as to exact work done by Venkategowda prior to his appointment there. He stated in his cross-examination that he does not deal with the growers directly and he checks the quality of cane supplied and it is a technical matter. He denied a suggestion that the work of Cane Superintendent is not supervisory and that he spends most of his time on technical matters. Another

witness G. Narayana Murthy (D.W. 2) deposed that he is working as Chief Accountant in Pandavapura Sugar Factory and that Second Wage Board recommendations are implemented by the factory from 1st November 1969 and a copy of the same is at Ex. D-11. According to him. Venkategowda is fitted in Supervisory 'B' grade in the scale of 305–20–405–25–630 and that it is as per the Wage Board recommendations and that arrears of salary is drawn by Venkategowda and his pay is fixed at Rs. 485-70 paise *plus* Rs. 45-90 paise as his wage and it is as per Ex. D-11 (a). In his cross-examination he stated that Venkategowda opted to the scale and so arrears of pay were given to him and he drew his arrears in February 1972. This is all the oral evidence led by the 2nd party.

8. I will now discuss and consider several documents produced by the parties. The documents produced by the first party are Exts. P-1 to P-47. The documents and papers produced by the II party are Exts. D-1 to D-11.

9. The appointment order of Sri Venkategowda as Assistant Cane Superintendent is dated 27th August 1960. A true copy of the order is produced at Ex. P-1. There is no dispute about this order. One Sri Gopalakrishna worked as Cane Superintendent. He was lent hand by the Government. He was withdrawn and Sri M. K. Venkategowda was kept incharge of the duties of the Cane Superintendent with effect from 14th December 1961. A true copy of the report is at Ex. P-2. Sri Venkategowda worked as Cane Superintendent for some time and from 11th July 1963 one Lakshminarasimhiah was appointed as Cane Superintendent and Venkategowda handed over charge to him. A true copy of the report is produced at Ex. P-3. Sri Lakshminarasimhiah was relieved from 31st March 1965 and over handed charge to Sri Venkategowda. A true copy of the memo is at Ex. P-4. On 24th May 1965 Sri Venkategowda handed charge over to one G. S. Thontadarya and a true copy of the report is at Ex. P-5. The Pandavapura Sahakara Sakkare Karkhane Employees Association wrote

to the General Manager of the Sugar Factory on 21st September 1966 requesting to fix the pay scale of Venkategowda as Assistant cane Superintendent at 300-600 for the reasons given therein with retrospective from 1st November 1960. A true copy of such representation made is produced and marked as Ex. P-6. Thereafter on 16th December 1966 Sri Thontadarya, Cane Superintendent, was relieved and Sri Venkategowda took charge from him. A true copy of the report is produced at Ex. P-7. Sri Thontadarya reported to the Managing Director of the sugar factory intimating that he handed over charge to Sri Venkategowda in the afternoon of 21st December 1966 since he is proceeding on earned leave. A true of the letter is at Ex. P-8. As per such representation made by Sri Venkategowda to the Assistant Labour Commissioner, Mysore, the management of the sugar factory was asked some clarification and the management gave a reply stating that " against the standard nomenclature of Cane Development Officer which is classified as supervisor the prevailing designation include the post of Assistant Cane Superintendent also and so Sri M. K. Venkategowda, Assistant Cane Superintendent has already been given supervisory grade as recommended by the Wage Board ". A true copy of the same is produced at Ex. P-9. In this matter, the dispute had been referred to the Industrial Tribunal, Bangalore and it was pending in I.D. No. 53/1968. The statement filed by I party *viz.*, for Venkategowda is produced at Ex. P-10. The objections filed by the management of the sugar factory is at Ex. P-11. The matter was settled amicably before the Industrial Tribunal. The copy of the settlement deed is produced at Ex. P-12. As per such settlement the 2nd party agreed to pay a lumpsum of Rs. 3,250 to Venkategowda as full and financial settlement of his claim, and that Venkategowda agreed to draw his salary of his own scale of 200-15-275-EB-15-350 without any prejudice to his final benefits, if any, as Cane Superintendent from the date of the regularisation. Thereafter Sri Venkategowda again represented to the Deputy Labour Commissioner for fixation his pay as Cane Superintendent. The conciliation

proceeding went on before the Deputy Labour Commissioner, Bangalore. The Deputy Labour Commissioner, Bangalore could not bring about the settlement between the parties. The Deputy Labour Commissioner wrote to the Government on 15th October 1970 stating that the management of the sugar factory was not prepared to consider the request of Sri Venkategowda on the plea that he is not a 'workman' and hence no compromise was possible and the conciliation proceedings are closed and the report is submitted to the Government as per rules. A true copy of the latter of the Deputy Labour Commissioner, Bangalore dated 15th October 1970 is produced at Ex. P-13. The P.S.S.K. Employees Association had filed the statement for Sri Venkategowda and a copy of that statement is produced at Ex. P-14 which is dated 23rd April 1970. The statement filed by the management of the sugar factory is also produced at Ex. P-15. The P.S.S.K. Employees Association had also written to the General Manager of the factory on 24th January 1970 for fixation of the pay scale of Venkategowda and some reasons were also given in the same stating that the pay scale of Sri Venkategowda be fixed in the grade of 600–40–1,000 with effect from 22nd December 1966, the date on which the services of Sri Venkategowda were regularised as Cane Superintendent. A copy of such representation which is dated 24th January 1970 is produced at Ex. P-16. Meanwhile the management of the sugar factory had appointed one B. S. Chandrasekhar as Cane Development Officer on a consolidated salary of 900 rupees per month *plus* 75 rupees F.T.A. and the period of appointment was for 3 years. A copy of the order dated 8th January 1970 is produced at Ex. P-17. Prior to the same on 19th December 1969 Sri Venkategowda himself sent a representation to the Chairman of the sugar factory requesting to fix his pay in the grade of 600–40–1,000 with effect from 21st December 1966. He had given some reasons in such representation made. A copy of the such representation made is produced at Ex. P-16. Even prior to the same, Venkategowda had made representations to the General Manager of the Sugar

Factory and the Chairman also under Exts. P-21, P-20 and P-19 dated 4th December 1968, 9th August 1969 and 22nd September 1969 for early action to fix his salary in a suitable grade. Sri Venkategowda officiated as Cane Superintendent from 21st December 1966 and the Managing Committee of the Sugar Factory passed a resolution on 27th March 1968 to regularise his post as Cane Superintendent with effect from 21st December 1966. It was intimated to Sri Venkategowda on 23rd April 1968. A copy of the letter is produced at Ex. P-23. The Managing Director of the Sugar Factory informed Sri Venkategowda under his letter dated 18th March 1968 stating that his fixed travelling allowance is raised to 75 rupees per month from 30 rupees from the date he took charge from the Cane Superintendent *i.e.*, from 21st December 1966 and his arrears was ordered to be disbursed. A copy of this letter is produced at Ex. P-24. The first party has produced some letters at Ex. P-44, P-24 and P-25. They refer to the pay scale prevailing in the India Sugars and Refinery, Ltd., Hospet and the Bidar Sahakara Sakkare Karkhane, Ltd., Hallikhed. An extract from the recommendation of the First Sugar Wage Board pertaining to Cane Development Officer, Cane Supply Superintendent, Deputy Cane Manager etc., is produced at Ex. P-26. The post of Cane Development Officer is described as supervisory and he is to assist the Cane Manager in the discharge of his duties and do such other duties assigned to him. The post of Cane Supply Superintendent is described as Clerical Grade I. Sri G. S. Thontadarya had been designated as Cane Development Officer but however his designation was changed as Cane Superintendent and the post of Cane Development Officer was abolished. An extract from the proceedings of the meeting of the Board of Directors held on 28th May 1965 is produced at Ex. P-27. The vouchers passed by Sri Venkategowda for receiving salary from the month of August 1970 to February 1971 are got produced at Exts. P-20 (a) to P-33. The total emoluments drawn by him are shown as less than Rs. 500 per mensem. The Cane Development Committee consisting of Chairman of the Karkhane,

Vice-Chairman of the Karkhane, the Managing Director of Karkhane and other officials uses to held and extracts from the proceedings of such meetings held on 28th October 1967, 30th September 1968, 15th January 1969, 4th December 1968 are produced at Exts. P-34 to P-40. It is shown in the same that Cane Superintendent Sri M. K. Venkategowda was the convenor of the meetings and Sri Venkategowda admitted that he used to take down the proceedings of the meeting. It is found from the same that some policy matters used to be decided in such meetings, and also about some things connected with the supply of sugarcane, illegal harvesting of cane by some of the growers etc., and directions were given to the Cane Supervisors and the Cane Yard Superintendent. The voucher for having paid salary of Sri Venkategowda for December month of 1966 is produced at Ex. P-41. The same for August 1970 is at Ex P-42. It is found from the extract at Ex. P-45 that Cane Superintendent in the Mysore Sugar Company, Ltd., Mandya is paid in the scale of 400–30–640–40–800–50–950. The annual report of the Mysore Sugar Company for 1962-63 is produced at Ex. P-46. After the recommendations of the Second Wage Board were implemented by the II Party Sri Venkategowda gave a declaration stating that he opts to the new revised scale of pay and D.A. as mentioned in the list. Such declaration is dated 1st February 1972. Sri Venkategowda has endorsed the same that under protest and without prejudice to the legal claim as Cane Superintendent from the date of regularisation he opts to the new revised scale of pay and D.A. The original declaration given by him is produced at Ex. P-47. These are all the documents produced by the first party.

10. I will now discuss and consider the documents and papers produced by the 2nd Party. On 22nd September 1969 Sri Venkategowda wrote to the Chairman of the II Party stating that the working of all Sections are increased and he is to tour every day to check up the field work, etc., and that in addition to the same he has to personally supervise the work of Weigh Bridge Clerks and other staff includ-

ng the Cane Yard Supervisors and it has all involved on him greater amount of work and so to appoint one Assistant Cane Superintendent and also one Cane yard Superintendent to assist him in the Cane Section as well as in the Cane Yard work. A copy of this letter is produced at Ex. D-1. Sri Venkategowda has admitted it. It is stated in this letter that he is also doing supervisory work over Weigh Bridge Clerks and other staff including the Cane Yard supervisors. The salary slip of Sri Venkategowda paid for the month of November 1969 is produced at Ex. D-2. Salary given to him is shown as Rs. 514–80. Sri Venkategowda admitted it in his evidence. On 10th March 1971 he was paid Rs. 200 as advance against the amount that may become due to him on account of the implementation of the Second Central Sugar Wage Board recommendations. The voucher for the same is produced at Ex. D-3. The diaries maintained by Sri Venkategowda in 1962 is produced at Ex. D-4. It shows that he used to instruct Supervisors as well as the Field Assistants to take up intensive tour and he also checked the planting registers. He also attended the meeting of the officers and conducted meeting of the staff etc. He inspected illegal harvesting and the Supervisors were informed to give notice to the parties to stop harvesting. He also instructed Supervisors regarding issue of permits and for arranging lorries etc. In 1967 Sri Venkategowda requested the Managing Director to enhance the rate of F.T.A. His original application given is at Ex. D-5. The agreement deed executed by Sri B. S. Chandrasekhar who has been appointed as Cane Development Officer on a fixed salary of Rs. 900 *plus* 75 F.T.A. per mensem is produced at Ex. D-6. The report of the Second Central Wage Board for the sugar industry 1970 is produced at Ex. D-7. In the appendix V-A at page 264 the qualifications of Cane Superintendent (supervisory 'B') are stated that he should be a graduate. The duties assigned to him are to arrange for cane supply to the factory and to do other works as directed by the Cane Manager or General Manager, as the case may be. It is stated in the remarks column that the previous designation of Cane

Supply Superintendent is changed to Cane Superintendent. This is produced to show that Venkategowda is Cane Superintendent (supervisory, 'B') and his post is equivalent to to the former Cane Supply Superintendent. Oppige register of the II Party is produced at Ex. D-8. This register is in respect of the cane growers, their lands and who agreed to supply cane to the sugar factory on execution of the agreements. The Field Assistants, are to supervise the plantings, of cane and report the same to the Supervisors. Sri Venkategowda was put a question in his examination that Cane Superintendent is the authority to check such register maintained in the Cane Section and he is the head of such section, but he denied it. The entries made in Ex. D-8 at page 125 were brought to his notice. Sri Venkategowda admitted to have passed such remarks in the column meant in it after checking the entries made therein. What is stated by him there is that at the time of accepting ratoon cane after using non-oppige cane for turn over use separate applications should be obtained from the concerned party and the Supervisor should personally inspect the plot and then he has to accept oppige if it is first ratoon crop. He has also endorsed therein that correct date of plantation should be given by the Supervisor. For another item he has remarked that non-oppige ratoon cane should be accepted only from those who have not got oppige in the previous year. This writing of Sri Venkategowda was quoted to show that he supervised over the work of the Field Assistants and the Supervisors. Sri Venkategowda admitted that these writings are in his hands but according to him, he did so as per the instructions of the Chairman, though it is not so stated there. The above entry is dated 22nd October 1969. At page 135 on dated 12th November 1969 he has again passed a remark that for the year 1968-69 as per memo No. 314/69, dated 12th November 1969, hence forth agreements for ratoon cane should not be accepted. Sri Venkategowda admitted having passed these remarks. Then at page 138 on dated 7th February 1970 he has stated in the remarks column that these cane growers who have not obtained agreement for 1968-69 they may be

allowed to crush cane of October month and the further cane to be accepted on the previous agreement and in this connection the Supervisors are personally to examine the area of the plantation and the tonnage of the crop. But, it should not exceed the area decided by the Cane Development Committee. However, Venkategowda tried to explain that he made such entries as per the proceedings of the Development Committee. But, the same is not noted in the remarks column. A memo book of the Cane Section is produced at Ex. D-9. Sri Venkategowda stated in his deposition at para 10 that manure is supplied to cane growers through Co-operative Society and the Cane Supervisors issue permits and the cultivators are expected to use the manure for cane growing only in those particular lands and that sometimes the cane growers misuse the manure and the Field Assistants are expected to check the misuse. It was put to him that the misuse of manure is reported to the Cane Superintendent but he denied it, and he stated further that it is reported to the Cane Development Committee. He also stated that the report of the harvesting of the cane is given to the Cane Superintendent but Cane Superintendent does not pass any remarks. His attention was brought to Ex. D-9(a) and Sri Venkategowda stated that he has passed those remarks and he called for the explanation of the Supervisor. In this memo Section Supervisor was asked to give explanation as to why the cane cut was not sent within 10 days and if the Supervisor failed to send his explanation within 3 days his salary will be withheld. In Ex. D-9(b) Sri Venkategowda directed a Section Supervisor to cancel the contract as the date of planting is doubtful and to report, failing which action will be taken against him. Sri Venkategowda stated that if the allotted lorries are found to be broken it was his duty to make alternative arrangement and as per Ex. D-9(c) and D-9(d) he wrote to Section Supervisor to send cane in the lorry allotted. Sri Venkategowda also state that Supervisors submit their diaries to the Cane Superintendent and it is his duty to check them and if anything found wrong they are to be warned. Such warnings

given by him are found in Ex. D-9(e) and D-9-(f). Sri Venkategowda also admitted as per his writings at Ex. D-9(e) he directed the Supervisor to allot a particular lorry instead of another lorry and give the load. These writings of Venkategowda were brought to his notice in order to show that he is also doing supervisory work. Another memo book is produced at Ex. D-10. The writings ade in Ex. D-10(a), D-10(b) and D-10(c) are in the hand writings of Venkategowda. He admitted the same. As per Ex. D-10(a) he asked the explanation of a Cane Yard Supervisor that supply of cane is not satisfactory and directed him to give his explanation regarding shortage of cane and he wrote if explanation was not offered within 3 days action will be taken against him. Sri Venkategowda also admitted that as per Ex. D-10(b) he directed Field Assistants to stop taking contracts. He also admitted that as per Ex. D-10(c) he allotted lorries to the Section. According to Sri Venkategowda he did all these things as per the instructions of the Chairman but, such things are not mentioned in the writings referred above. The II party has produced at Ex. D-11 fitments of employees as approved by the said committee for implementation of Second Central Sugar Wage Board recommendations. At page 67 (marked as Ex. D-11(a) Sri Venkategowda is shown as Cane Superintendent classified as Supervisory 'B' in the grade of Rs. 305-20-405-25-630.

11. From the evidence as a whole, it is putforth by the Advocate for the II Party that on the date when Sri Venkategowda made his claim for the revised rate of salary, his total emoluments exceeded 500 rupees and also that the nature of his duties were more supervisory. This is so putforth in order to show that Sri Venkategowda cannot be a 'workman' within the meaning of Section 2 (s) (iv) of the Industrial Disputes Act and that such a dispute cannot be referred to the Labour Court. The word 'Industrial Dispute' as stated in Section 2(k) of the Industrial Disputes Act, means any dispute or difference between employers and 'workmen' which is connected

with the employment or non-employment or the terms of employment or with the conditions of labour, of any person. If Sri Venkategowda is held to be not a 'workman', the Labour Court cannot have jurisdiction to adjudicate any such reference. The Advocates on both the sides referred to many decided cases in respect of the stands taken by them respectively. I will now consider the position of law in view of the decided cases by the Supreme Court and the High Courts.

12. The fourth exception as stated in Section 2 (s) of the Industrial Disputes Act is to the effect that persons employed to do supervisory work are excluded from the definition of 'workmen' who are drawing a salary of exceeding 500 rupees per month and also those who are employed in a supervisory capacity, exercises either by nature of the duties attached to the office or by reason of powers vested in them, functions mainly of a managerial nature. In otherwards, it means that a person employed to do supervisory work has been expressly excluded from the definition if he draws a salary of more than 500 rupees per month or irrespective of the salary he draws he exercises functions mainly on managerial nature. In *Andhra Scientific Company, Ltd.,* Vs. *Seshagiri Rao,* 1959 (2) *Labour Law Journal page* 717 the Andhra Pradesh High Court held that stores manager incharge of maintenance of general stores etc., and incharge of stock requisitions exercised functions which were supervisory in nature. The matter had gone up to the Supreme Court. The Supreme Court did not interfere with such a finding given. This is reported in 1961 ([illegible] LLJ, page, 117. In this case the employee was held [illegible] a 'workman' on a different ground *viz.,* he was getting less than 500 rupees salary per month. *In All India Reserve Bank Employees Association* Vs. *Reserve Bank of India—A.I.R.* 1966 *SSC* 305 the Supreme Court observed that the word 'Supervise' and its derivoties were not words of precise import and must often be construed in the light of the context. In that case the duties of the employee was to distribute work, detect facts

report for penalty, make arrangements for filling vacancy etc., and the court held that such duties were supervisory in character. In the present case, the evidence is already perused and discussed by me. Sri Venkategowda supervises over the works done by Field Assistants, Cane Supervisors and Cane Yard Supervisors and he used to give instructions to them on finding fault with them and used to call for reports from them and he used to make arrangements for allotment of lorries and he also proposed punishments for faults committed. As per the nature of work done by him his work is to be held as supervisory in character, in view of the said case of the Supreme Court. The Advocate for the I party put forth that incidental work given to the employee which is in the nature of supervisory work cannot be taken as supervisory work. He cited some cases in this respect. *In South India Bank* Vs. *A.R. Chako—A.I.R.* 1964 *SSC page* 1522—the facts were that Accountants were to do some supervisory duties and the Court held that they were senior clerks and he is doing mainly clerical duty though designated as Accountant and so such person will not cease to be a 'workman' on his being appointed as an Accountant. However, in the present case, the facts are different. Sri Venkategowda is not a Clerk or Accountant. The nature of his duties done by him are found from the evidence as a whole which are supervisory in nature and that whatever duty done by him are not incidental supervisory work. The term 'supervisor' is not defined in the Industrial Disputes Act. However, it means that an individual having authority, in the interest of employer. to hire, transfer, suspend, lay off recall promote, discharge, assign, or discipline other employees or responsible to direct them of effectively to recommend such action in exercising the authority and which requires the use of independent judgment. In such cases, the first test of the nature of employment which is to be of a supervisory capacity and the second test is of pecuniary limit of the wages which have to be over 500 rupees per month. The nature of test will really depend upon the nature of the industry, type of work in which he engaged, the organizational set up of the

particular unit of the industry and the like factor. Whether the employment of a person is in a supervisory capacity or not in a particular case cannot be judged by any hair is putting analysis. The broad total consideration of the essential nature of the work, office, designation, and the entire context of his employment is to be taken into consideration. In a recent case of the Supreme Court—*Ananda Bazaar Patrika, Ltd.*, Vs. *its 'workmen'*—1969 (2) *Labour Law Journal-page* 670 it is observed that if a person does mainly supervisory work but, incidentally or for a fraction of time also does some clerical work, he should be held to be employee in supervisory capacity. It is true that incidental supervisory work cannot be construed as supervisory work. But, in the present case the main duties of the Cane Superintendent is that of supervisory in character. Sri Venkategowda admitted that he does supervision work over the Cane Supervisors, Field Assistants and Weigh Bridge Section. But, according to him, he did such work as per the directions of the Chairman and also the Cane Development Committee. But, there is no evidence to substantiate such a thing. In ordinary course, the Chairman of the factory cannot supervise over the day to-day work done by employees in the factory. The Cane Superintendent Venkategowda in his application given to the Chairman under Ex. D-1 he has stated that his duty is personally to supervise the work of Weigh Bridge Clerks and other staff including the Cane Yard Supervisors. It is the case of Sri Venkategowda that Cane Development Committee used to give directions to the Supervisors but, there is nothing on record in writing to substantive the same.

13. Sri Venkategowda is under suspension. During such suspension period he is paid regular salary except the fixed travelling allowance. Such fixed T.A. is not given to an employee during the suspension period. However, while he was on duty he was drawing more than 500 rupees as salary. It is so found from the voucher at Ex. D-2. This voucher is in respect of his salary for the month of November 1969. So, the wages or the salary is to be taken into account

as if on duty and not while under suspension. The Travelling allowance is included as part of wages. It is so found in the decision of the Madras High Court in *Krishna Murthy* Vs. *The Mail* 1964 *Labour Law Journal, Part II—page* 88. In the present case, Sri Venkategowda was drawing a salary of more than Rs. 500 on the date when he raised the dispute.

14. On the facts found from the evidence as a whole and the law as discussed above, it is seen that the nature of duties done by Sri Venkategowda is mainly supervisory in nature and further that his total emoluments were more than Rs. 500 per month when he raised the dispute. Therefore, he cannot be be called as a 'workman' within the meaning of Section 2(s) of the Industrial Disputes Act.

15 The II Party has raised a contention that this Labour Court has no jurisdiction to adjudicate the dispute upon such a reference made at the instance of Employees Association. In a case from the Supreme Court *Workmen of Dahingeapara Tea Estate* Vs. *Dahingeapara Tea Estate-A.I.R.* 1958 *S.C.* 1026 it is observed that where a dispute is raised by 'workmen' as against their employer, the person or persons regarding whose employment or non-employment the dispute is raised need not be strictly speaking 'workmen' within the meaning of the Act but, must be persons in whose employment or non-employment the 'workmen' as a class have a direct or substantial interest. In this case another ruling of the same Court reported at page 355—A.I.R. 1958 SC was also considered. The interpretation made in the case reported at page 353 is that, having regard to the scheme and objects of the Act and its other provisions, the expression "any person" in Section 2(k) of the Act must be read subject to such limitations and qualifications as arise from the contest. The two crucial limitations are laid down therein. The first limitation is the dispute must be of real dispute between the parties so as to be capable of settlement or adjudication by one party to the dispute giving necessary relief to the

other, and the second limitation is the person regarding whom the dispute is raised must be one in whose employment, non-employment, terms of employment or conditions of labour, the parties to the dispute have a direct or substantial interest. It is observed further that in the absence of such interest, the dispute cannot be a real dispute between the parties. It is finally observed that where the 'workmen' raise a dispute as against their employer the person regarding whose employment, non-employment etc., the dispute is raised need not be strictly speaking 'workmen' but must be one in whose employment etc., the 'workmen' as a class have a direct and substantial interest. In the case before me Sri Venkategowda is held by me not coming within the definition of 'workman'. The 'workmen' of the Employees Association have no direct or substantial interest in the employment, terms of employment and his conditions of service, as the post of Cane Superintendent belongs to a different category altogether even though Sri Venkategowda is a member of the Association. Therefore, the dispute raised by the Association regarding the salary of Sri Venkategowda cannot be as an said as an industrial dispute between the parties within the meaning of Section 2(k) of the Act. In the other case reported at page 1026 the facts were different and the 'workman' in that case had direct or substantial interest in respect of the employees on whose behalf dispute had been raised. Another case relied upon for the I party *Standard Vacuum Company* Vs. *Their workmen—A.I.R.* 1960 *SSC* 948 was a dispute raised by regular workmen relating to contract labour. These facts cannot be made applicable to the facts in the present case. It is true that the Supreme Court held in *Kays Construction* Vs. *Its workmen—A.I.R.* 1959 *SC* 208 that an industrial dispute can be raised by non-workers. However, it is not so material in the present context since I have already held that Sri Venkategowda is not a 'workman'

16. Another question raised for the II Party is that as per the Second Wage Board recommendations a particular

scale of pay is fixed for the Cane Superintendent describing him as supervisory 'B'. And that Sri Venkategowda has asked for the scale of pay as 600–1,000. And that Government has referred the case to decide whether the I party is justified in demanding the scale of pay of Venkategowda to be revised in the grade of 600–40–1,000 and that such reference is bad because the first party did not request for the revision of pay and on the other hand, the request was to fix the pay scale of Sri Venkategowda in the said scale. However, the scope of reference is to be gathered from the circumstances preceding the Government order. This is the view expressed in the *Jaipur Udyog Ltd.*, Vs. *The cement Works Karmachari Sangh—A.I.R.* 1972 *SC* 1357. So the reference cannot be pendantically considered. Whatever it may be I have come to the conclusion that Venkategowda is not a 'workman' and so no industrial dispute can be raised for him. I have also held that the Labour Court has no jurisdiction to adjudicate the dispute. Hence, the reference will have to be answered in the negative.

17. In the result, the reference is answered in the negative, the parties to bear their respective costs.

Dictated to the Stenographer, transcribed by him, revised and pronounced by me in open court this 20th day of November 1972.

(R. B. HANMANTGAD),
Presiding Officer,
Labour Court, Mandya.

APPENDIX

I. *List of witnesses examined on behalf of I Party :*

P.W. 1—Sri N. L. Nagappa.
P.W. 2—Sri H. M. Devegowda.
P.W. 3—Kariputtegowda.
P.W. 4—M. K. Venkategowda.
P.W. 5—G. Thimmaiah.

II. *List of witnesses examined on behqlf of II Party*

D.W. 1—Sri B. S. Chandrasekhar.
D.W. 2—Sri G. Narayana Murthy.

III. *List of documents produced as exhibits on behalf of I Party :*

Ex. P-1—True copy of the order of appointment of I Party Sri M. K. Venkategowda as Assistant Cane Superintendent made by the II Party, dated 27th August 1960.

Ex. P-2—True copy of the Report of Charge handed over to Sri M. K. Venkategowda by Sri C. Gopalakrishna on the afternoon of 14th December 1961.

Ex. P-3—True copy of order posting of Sri D. P. Lakshminarasimhiah, B.A., as Cane Superintendent.

Ex. P-4—Copy of Office Memo No. 5095/64-65, dated 24th February 1965 relieving Sri D. P. Lakshminarasimhjah from his duties from the After-noon of 31st March 1965.

Ex. P-5—True copy of office Memo S. 850/65, dated 24th May 1965 in respect of posting of Sri G. S. Thontadarya, Cane Development Officer.

Ex. P-6—True copy of the Notice of Demand on behalf of the officials noted therein to treat the demand as an Industrial Dispute.

Ex. P-7—True copy of Memo No. 6502/66-67, dated 16th December 1966 in respect of relieving of Sri G. S. Thontadarya, Cane Development Officer.

Ex. P-8—True copy of the letter No. S. 311-5/66, dated 21st December 1966 in respect of availing of Earned Leave by Sri G. S. Thontadarya.

Ex. P-9—Copy of letter No. 3905/65-66, dated 18th December 1965 of General Manager, P.S.S.K., Ltd., regarding the clarification of pay scale under the Central Wage Board.

Ex. P-10—Copy of the claim statement filed before the Industrial Tribunal, Bangalore in I.D. No. 53/68, dated 9th August 1968.

Ex. P-11—Copy of objections filed by the II Party in I.D. No. 53/1968 on the file of Industrial Tribunal, Bangalore dated 9th September 1968.

Ex. P-12—Copy of the Memorandum of settlement filed in the said I.D. No. 53/68 on 17th April 1969.

Ex. P-13—Copy of the conciliation report dated 15th October 1970 issued by the Department of Labour, Bangalore.

Ex. P-14—Copy of Reply Statement filed by P.S.S.K. Employees Association before the Assistant Labour Commissioner and Conciliation Officer, Mysore dated 23rd April 1970.

Ex. P-15—Copy of letter No. 5728/69-70, dated 3rd April 1970 by the Managing Director in respect of fixation of pay scale of the post of Cane Superintendent.

Ex. P-16—Copy of the Demand Notice dated 24th January 1970 issued to the General Manager, P.S.S.K., Ltd., by the Union in respect of fixation of pay of Cane Superintendent.

Ex. P-17—Copy of Memo No. 4010/69-70, dated 8th January 1970 in respect of the order of appointment of Sri B. S. Chandrasekhar as Cane Development Officer.

Ex. P-18—Copy of representation made by Sri M. K. Venkategowda on 19th December 1969 to the Chairman of P.S.S.K., Ltd., Pandavapura.

Ex. P-19—Copy of letter addressed by Sri M. K. Venkategowda I Party—to the General Manager, P.S.S.K., Ltd., Pandavapura in respect of fixation of pay.

Ex. P-20—Copy of representation, dated 9th August 1969 made by Sri M. K. Venkategowda to the General Manager P.S.S.K., Ltd., Pandavapura in respect of fixation of pay of Cane Superintendent from 21st December 1966.

Ex. P-21—Copy of representation dated 4th December 1968 made by Sri M. K. Venkategowda to the Chairman, P.S.S.K., Ltd., Pandavapura in respect of fixation of scale of pay.

Ex. P-22—Copy of the memo No. 509 S/67-68, dated 23rd April 1968 regularising the appointment of Sri M. K. Venkategowda as Cane Superintendent.

Ex. P-23—Copy of memo No. 4414/67-68, dated 18th March 1968 raising the F.T.A. of Sri M. K. Venkategowda.

Ex. P-24—Copy of the extract of Deccan Herald News Paper, dated 24th August 1970 in respect of Bidar Sahakara Sakkare Karkhane, Ltd., Bidar, for the post of Cane Development Officer.

Ex. P-25—Copy of Interview letter No. PSSK/70-71/1/65/4818, dated 17th/21st September 1970 fo rthe post of Cane Development Officer.

Ex. P-26—Extract of the Recommendation of the First Sugar Wage Board, Page 342, Appendix LXIV.

Ex. P-27—True extract of proceedings of the 88th meeting of the Board of Directors held on 28th May 1965.

Ex. P28—Salary acknowledgment slip of Sri M. K. Venkategowda for the months of August 1970.

Ex. P-29—Salary acknowledgment slip of Sri M. K. Venkategowda fo rthe month of September 1970.

Ex. P-30—Salary acknowledgment slip of Sri M. K. Venkategowda for the month of October 1970.

Ex. P-31—Salary acknowledgment slip of Sri M. K. Venkategowda for the month of December 1970.

Ex. P-32—Salary acknowledgment slip of Sri M. K. Venkategowda for the month of January 1971.

Ex. P-33—Salary acknowledgement slip of Sri M. K. Venkategowda fo rthe month of February 1971.

Ex. P-34—Copy of the proceedings of the 30th meeting of the Cane Development Committee held on 28th October 1967.

Ex. P-35 Copy of the Proceedings of the 44th meeting of the Cane Development Committee.

Ex. P-36—Extract of the Proceedings of the 48th meeting of the Cane Development Committee held on 15th January 1969.

Ex. P-37—Extract of the Proceedings of the 51st meeting dated 10th May 1969.

Ex. P-38—Extract of the Proceedings of the 52nd meeting dated 5th January 1969.

Ex. P-39—Extarct of the Proceedings of the 53rd meeting dated 3rd June 1969.

Ex. P-40—Extract of the Proceedings of the 46th meeting dated 4th December 1968.

Ex. P-41—True copy of pay slip for December 1966.

Ex. P-42—True copy of pay slip for August 1970.

Ex. P-43—Log Book, dated 1st October 1968 to 30th December 1970 of the P.S.S.K., Ltd., Pandavapura.

Ex. P-44—Original of the letter, dated 23rd April 1968 addressed by the India Sugar and Refineries Ltd., Hospet to the P.S.S.K., Ltd., Pandavapura.

Ex. P-45—Extract of pay scales of Cane Superintendent of the Mysore Sugar Co., Ltd., Mandya (Lent Officers).

Ex. P-45(a)—Extract of pay scales of Cane Superintendent of Mysore Sugar Co., Ltd.

Ex. P-46—30th Annual Report of Mysore Sugar Co., Ltd., Mandya for 1962-63.

IV. *List of documents produced as Exhibits on behalf of the II Party*:

Ex. D-1—Representation in respect of appointment of one Assistsant Cane Superintendent made by I Party M. K. Venkategowda to the Chairman of the II Party on 22nd September 1969.

Ex. D-2—Receipt of pay for the month of November 1969 acknowledged by Sri M. K. Venkategowda—I Party.

Ex. D-3—Receipt of Rs. 200 towards the advance against the amount due to Sri M. K. Venkategowda I Party on 10th March 1971.

Ex. D-4—Diary of Sri M. K. Venkategowda, I/c Cane Superintendent for the month of July 1962.

Ex. D-5—Renresentation of Sri M. K. Venkategowda made on 15th November 1967 to the Managing Director of P.S.S.K., Ltd., Pandavapura.

Ex. D-6—Agreement dated 10th February 1970 made and executed by Sri B. S. Chandrasekhar, Cane Development Officer.

Ex. D-7—Book on the Report of the Second Central Wage Board for the Sugar Industry 1970.

Ex. D-8—Oppige Register of II Party for the year 1969-70.

Ex. D-9—Memo Book of Cane Section of the P.S.S.K., Ltd., Pandavapura.

Ex. D-9(a)—Portions marked at pages 17904, 17911, 17916, to D 9(g) 17938, 17918, 17924 and 17926 respectively.

Ex. D-10—Memo Book of Cane Section of P.S.S.K., Ltd., Pandavapura.

Ex. D-10 (a)—Portions marked in pages Nos. 16, 17 and 18.
Ex. D-10 (c)

Ex. D-11—Final Proposals of fitments of Employees as approved on 22nd January 1972 by the Sub-Committee for implementation of the Second Central Sugar Wage Board Recommendations placed before the special meeting of the Board of Directors on 27th January 1972.

(Sd.)

(R. B. HANMANTGAD)

Presiding Officer,
Labour Court, Mandya.

ORDER

Bangalore, dated the 28th December 1972.

S.O. 270.—WHEREAS by State Government Order No. FCL 627 LLD 70 dated 7th April 1971 the Industrial Dispute between the workmen and the management of Pandavapura Sahakara Sakkere Karkhane Limited, Pandavapura, was referred to the Labour Court, Mandya for adjudication.

AND, WHEREAS the Labour Court has submitted to the State Government its award in respect of the said Industrial Dispute.

NOW, THEREFORE, in exercise of the powers conferred by section 17 of the Industrial Disputes Act, 1947 (Central Act XIV of 1947), the Government of Mysore are pleased to direct the publication of the said award as above, in the *Mysore Gazette*.

[No. FCL 247 LLA 72]

By Order and in the name of the Governor of Mysore,

ANIRUDHA DESAI,

Under Secretary to Government,
Food, Civil Supplies and Labour Department.